Supreme Court of the United States

OCTOBER TERM, 1959

No. 712

JOYCE C. THORPE, PETITIONER,

vs.

HOUSING AUTHORITY OF
THE CITY OF DURHAM.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 712

JOYCE C. THORPE, PETITIONER,

vs.

HOUSING AUTHORITY OF THE CITY OF DURHAM.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

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[fol. 7]

PROCEEDINGS IN JUSTICE OF PEACE COURT

PROCEEDINGS TO RECOVER POSSESSION OF LAND

HOUSING AUTHORITY OF THE CITY OF DURHAM,

against

JOYCE THORPE.

Justice of the Peace.

Durham Township
Durham County

OFFICER'S RETURNS

On this day I served the within Summons on the defen-
[fol. 8] dant: ..... delivering a copy thereof, with a copy of the oath of the Plaintiff to said Defendant: .....

This 20 day of Sept., 1965

C. E. Evans, Constable; ....., Sheriff.

By ..... D. S.

JUSTICE'S COURT

DURHAM TOWNSHIP

OATH OF PLAINTIFF

Affidavit

Before: H. L. Townsend, Justice of the Peace.

The plaintiff maketh oath, that the defendant entered into possession of a piece of land in said County, located and described as follows: Apartment 38G—Ridgeway Avenue—McDougald Terrace property of Housing Authority of the City of Durham, under written lease from the plain-

tiff, Housing Authority of the City of Durham; that said defendant has failed to comply with the terms of said lease, to wit: written lease specified that either party may terminate upon fifteen (15) days' notice and the defendant, Joyce Thorpe, has received said fifteen (15) days' notice from the plaintiff, and the plaintiff has informed in writing the defendant to the effect that according to the terms of the lease the plaintiff wishes to terminate the lease. However, the defendant has failed and refused to vacate the premises. That the plaintiff has demanded the possession of premises of said defendant, who refuses to surrender it, but holds over; that the estate of the plaintiff is still subsisting, and [fol. 9] the plaintiff asks to be put in possession of the premises.

Housing Authority of the City of Durham, By: J. L. Bennett, Jr., Plaintiff.

Subscribed and sworn to before me, this the 17th day of September, 1965.

H. L. Townsend, Justice of the Peace.

FORM OF SUMMONS TO BE ISSUED BY THE JUSTICE

JUSTICE'S COURT

HOUSING AUTHORITY OF THE CITY OF DURHAM,

against

JOYCE THORPE.

State of North Carolina,
Durham Township,
Durham County.

Summons

Housing Authority of the City of Durham, by J. L. Bennett, Jr., having made and subscribed before me the oath,

a copy of which is above set forth, you are required to appear before me, on the 20th day of September, 1965, at 11:00 o'clock A.M., then and there to answer to the complaint, otherwise judgment will be given that you be removed from the possession of the premises.

Witness my hand and seal, this the 17th day of September, 1965.

H. L. Townsend, Justice of the Peace.

(Seal)

To Joyce Thorpe, Defendant.

EXECUTION

[fol. 10]

JUSTICE'S COURT

HOUSING AUTHORITY OF THE CITY OF DURHAM,

against

JOYCE THORPE.

State of North Carolina.

To any Lawful Officer of Durham County—Greeting:

You are hereby Commanded to remove the within named defendant, all other occupants and all of her belongings from, and put the above named plaintiff in possession of a certain piece of land, described in the plaintiff's affidavit attached hereto.

Return this writ, with a statement of your proceedings thereupon, before me, at Durham, North Carolina, within two days.

Witness my hand and seal, this 20 day of Sept., 1965.

H. L. Townsend, Justice of the Peace.

(Seal)

BEFORE H. L. TOWNSEND, JUSTICE OF THE PEACE

NOTICE OF APPEAL TO SUPERIOR COURT

To H. L. Townsend, a Justice of the Peace for said County—

Take notice, that the defendant in the above action appeals to the Superior Court from the judgment rendered therein by you on the 20th day of September, 1965, in favor of the plaintiff for the possession of the premises belonging to the Housing Authority of The City of Durham at 38-G Ridgeway Avenue, Durham, North Carolina, and that this appeal is founded upon the ground that the said judgment is contrary to law and evidence.

The written notice is given in addition to the notice given in open court upon the rendering of judgment against the [fol. 11] defendant on the 20th day of September, 1965.

Dated this 24th day of September, 1965.

M. C. Burt, Jr., Attorney for Appellant.

BEFORE THE JUSTICE OF THE PEACE

ORDER—September 20, 1965

It appearing that the summons with a copy of the oath of the plaintiff was duly served on the defendant, and whereas the defendant and the plaintiff appeared before me at 1:30 P.M. on the 20th day of September, 1965, and

after hearing the matter and the contentions of the parties, I adjudged that the defendant be removed from the premises described in the oath and affidavit of the plaintiff, and after the Court rendered the above said decision and after an Order of Eviction was entered, the defendant gave notice of appeal in open Court and has posted bond according to the terms of G. S. 42-34;

Now, Therefore, let this matter be placed on the Superior Court Docket for Durham County, North Carolina, and tried according to G. S. 42-34, et seq.

Witness my hand and seal, this 24th day of September, 1965.

H. L. Townsend, Justice of the Peace.

IN THE SUPERIOR COURT OF DURHAM COUNTY

STIPULATIONS

[fol. 12] It is stipulated that during all of the time of the controversy the Housing Authority of the City of Durham was a corporation duly organized under the Housing Authority Law of this State, doing business or transacting its activities here in Durham and was the owner of a property known as McDougald Terrace located here in Durham, which is a housing project operated by the Housing Authority of the City of Durham under its statutory authority and pursuant to its contract with the Federal government as a low-rent housing project; and that on the 11th day of November, 1964, the defendant Joyce C. Thorpe and the Housing Authority of the City of Durham entered into a dwelling lease which is introduced as Plaintiff's Exhibit 1 (a copy of same is substituted in lieu of the original); and that pursuant to this lease and under and by virtue of this lease the defendant Joyce C. Thorpe moved into an apartment in the McDougald Terrace project, Apartment No. 38-G; that on the 11th day of August, 1965, the Housing

Authority of the City of Durham by and through C. S. Oldham, Executive Director, duly delivered to the defendant Joyce C. Thorpe a notice which is Plaintiff's Exhibit 2, and introduced into evidence, and that she did receive that notice on the 12th day of August, 1965.

It is further stipulated that the Housing Authority of the City of Durham did not give to this defendant a reason why the Housing Authority was terminating the lease; that is to say, for failing to renew her lease, and that the defendant did request a hearing before the date of the eviction; that although the Housing Authority had a meeting on the subject the defendant was not given a hearing in which she herself was present and reasons assigned to her.

It is stipulated that the defendant has not vacated the apartment and refuses to do so; that this matter was brought on in a summary ejectment proceeding.

[fol. 13] It is stipulated that the defendant is twenty-five years of age.

It is further stipulated that on the 10th day of August, 1965, defendant was elected President of the Parents' Club, which is a club composed of residents of McDougald Terrace, and it is alleged by the defendant that the reason she is being evicted is due to defendant's participation in the organization of the Parents' Club in the McDougald Terrace.

It is further stipulated that this matter was duly heard in an action before a Justice of the Peace, and it was duly appealed, the defendant having provided bond for the rent as provided by law, and it is presently in the Superior Court on appeal from a judgment by the Justice of the Peace.

It is stipulated and agreed by plaintiff and defendant that this cause shall be heard by the Judge Presiding without a jury, and the trial by a jury is expressly waived by the plaintiff and defendant in this cause, and it is stipu-

lated and agreed that the Judge Presiding may hear and determine this cause by finding facts based on the stipulations herein entered and any affidavits entered into the record and draw therefrom conclusions of law.

It is agreed by counsel for plaintiff and counsel for the defendant that the affidavit of Mrs. Thorpe may be signed hereafter.

It is stipulated and agreed that if Mr. C. S. Oldham, the Executive Director of the Housing Authority of the City of Durham, were present and duly sworn and were testifying, he would testify that whatever reason there may have been, if any, for giving notice to Joyce C. Thorpe of the termination of her lease, it was not for the reason that she was elected president of any group organized in McDougald Terrace, and specifically it was not for the reason that she was elected president of any group organized [fol. 14] in McDougald Terrace on August 10, 1965, and not for any of the other reasons set forth in the affidavit, and that further he would testify that the reason, if any, for giving her notice and for her eviction was not because of her efforts to organize the tenants of McDougald Terrace, that C. S. Oldham did in fact so testify in the hearing before the Justice of the Peace when this case was originally heard before the Justice of the Peace.

IN THE SUPERIOR COURT OF DURHAM COUNTY

AFFIDAVIT OF DEFENDANT

The undersigned Defendant, being duly sworn, deposes and says:

I. That the plaintiff, Housing Authority of the City of Durham, is a domestic corporation, duly incorporated and existing under the laws of the State of North Carolina.

II. That the defendant is a resident of the City of Durham, County of Durham, State of North Carolina, residing at 38-G Ridgeway Avenue, McDougald Terrace.

III. That C. S. Oldham is a resident of the City of Durham, County of Durham, State of North Carolina, and is employed by the plaintiff, Housing Authority of the City of Durham, as its managing director.

IV. That 38-G Ridgeway Avenue is a dwelling in McDougald Terrace, a public housing project in the City of Durham, administered by the plaintiff.

V. That the plaintiff and the defendant entered into a written lease of the premises known as 38-G Ridgeway Avenue on the 11th day of November, 1964; that said lease provides, among other things, that "The Management may terminate this lease by giving to the Tenant notice in writing of such termination fifteen (15) days prior to the last [fol. 15] day of the term."

VI. That on the 12th day of August, 1965, the defendant received an eviction notice from the plaintiff, dated August 11, 1965, requiring that she vacate the premises within 15 days, said eviction notice failing to state the reason for said eviction.

VII. That the defendant is informed and believes, and therefore alleges, that her eviction was prompted by C. S. Oldham, Manager of the Housing Authority, who wants to get her out of the project because of her efforts to organize the tenants of McDougald Terrace; that she was elected president of a group organized in McDougald Terrace on August 10, 1965, and received a letter from the Housing Authority dated August 11, 1965, ordering her to move.

VIII. That the defendant is informed and believes, and therefore alleges, that the Housing Authority of the City of Durham is an administrative agency; that administrative agencies may not deprive a person of his constitutionally protected rights of life, liberty and property without due process of law, to wit: Notice and hearing which is adequate and fair; that the right to such a hearing

is a rudiment of fair play assured as a minimum requirement by the Fourteenth and Fifteenth Amendments, as well as by the due process clause of the Constitution of North Carolina.

IX. That the defendant, through her attorneys, by phone and by a letter dated August 25, 1965, requested a hearing in this regard to determine the reason for her eviction; that said request was denied.

X. That on the 1st day of September, 1965, the Housing Authority of the City of Durham and C. S. Oldham met with M. C. Burt, Jr., Attorney for the defendant, at which time the defendant, through her attorney, again [fol. 16] requested a hearing to determine the reason for her eviction; that the Chairman of the Housing Authority informed the attorney for the defendant that their rules and regulations make no provisions for a hearing and that a hearing could not be had and was therefore denied.

XI. That, upon information and belief, on the 1st day of September, 1965, the Housing Authority of the City of Durham and C. S. Oldham met with Detective Frank McRae, of the Police Department of the City of Durham, who supplied them with certain information allegedly uncovered during the investigation of her conduct; that neither the defendant nor her attorney were present; that at no time has the defendant or her attorney ever been confronted by her accuser and allowed to question him regarding the charges, or to offer any proof of the falseness of the charges.

XII. That, upon information and belief, on the 1st day of September, 1965, the plaintiff was informed by defendant's counsel that in his opinion the Constitution of the United States compelled them to inform the defendant of the reasons for her eviction and grant a hearing; that upon information and belief, said plaintiff has repeatedly refused to grant such rights voluntarily.

XIII. That said action by the plaintiff herein is taken under Section 157-9 of the General Statutes, which authorizes the Housing Authority "to manage as agent of any city or municipality located in whole or in part within its boundaries any housing project constructed or owned by the city," said action constituting State Action and a violation of plaintiff's constitutional rights under color of State law.

XIV. That the defendant and her family are unable to find decent, safe, and sanitary housing within her financial reach, although making every reasonable effort to do so; that she, for this reason, should be allowed to remain in [fol. 17] the Housing Authority Project.

This 20th day of October, 1965.

Joyce C. Thorpe, Defendant.

(Verified by Joyce C. Thorpe Oct. 20, 1965.)

In the Superior Court of Durham County

Motion to Quash

Now Comes the defendant and moves to quash the proceedings herein upon the grounds set forth in her duly verified affidavit, which is made a part hereof and includes the following:

I. That the tenant in a Public Housing Project has a *right* to her apartment and a deprivation of that right without a hearing violates due process of law as guaranteed by the 14th Amendment. *Dixon* v. *Alabama State Board of Education,* 294 F. 2d 150 (1961).

II. That the Housing Authority of the City of Durham, as a public administrative agency, is an arm of the State; that its action necessarily involved State action; that the State may not deprive a public housing tenant of her in-

terest in the leasehold unless the means conform with due process and that, *de minimis,* due process requires a hearing.

III. That the defendant's eviction primarily resulted from her community activities as an organizer of tenants, thus constituting an unconstitutional abridgement of her freedom of expression and a denial of equal protection of the laws. *Sherbert* v. *Verner,* 374 US 398, 10 L. ed. 2d 965; *Speiser* v. *Randall,* 357 US 513, 2 L.ed. 2d 1460; *Dixon* v. *Alabama State Board of Education,* 294 F. 2d 150 (1961).

Wherefore, this defendant moves the Court that the proceedings herein be quashed and judgment be given against this plaintiff.

Respectfully submitted this 20th day of October, 1965.

[fol. 18]

McKissick & Burt, By: M. C. Burt, Jr., Attorneys for Defendant.

IN THE SUPERIOR COURT OF DURHAM COUNTY

EXHIBIT #1—DWELLING LEASE

486-D

THE HOUSING AUTHORITY OF THE CITY OF DURHAM, N. C., (hereinafter called the "Management"), in consideration of the rental herein reserved and of the statements made by Joyce C. Thorpe (hereinafter called the "Tenant") as set forth in his signed application, hereby leases to the Tenant and the Tenant hereby hires and takes the premises in McDougald Terrace (hereinafter called the "Project") designated as Apartment No. 38-G Ridgeway Ave. for the term beginning November 11, 1964, and terminating at midnight November 30, 1964, at a rental of $19.33 for said term, payable in advance on the first day of said term.

The rental for these premises shall be based on the current family composition and family income as have been represented to the Management by statements of the tenant and other verifications on file in the Management Office, and shall be in conformance with the approved current rent schedule which has been adopted by the Management for the operation of this Project. This lease shall be automatically renewed for successive terms of one month each at the rental last entered and acknowledged below:

[fol. 19]

Apt. No.	Date	Contract Rent	Signature of Tenant	Signature of Management's Witness
38-G	12-1-64	$29.00	Joyce C. Thorpe	.....

Provided, there is no change in the income or composition of the family of the tenant and no violation of the terms hereof. In event of any change in the composition or income of the family of the tenant, rent for the premises shall automatically conform to the rental rates established in the approved current rent schedule which has been adopted by the Management for the operation of this Project and shall be chargeable on the basis established in Section 2 hereof.

Rent shall be payable in advance on the first day of each calendar month. This lease may be terminated by the Tenant by giving to Management notice in writing of such termination 15 days prior to the last day of the term. The Management may terminate this lease by giving to the Tenant notice in writing of such termination fifteen (15) days prior to the last day of the term. Provided, however, that this paragraph shall not be construed to prevent the termination of this lease by Management in any other method or for any other cause set forth in this lease.

The Tenant shall deposit with the Management the sum of Twenty Dollars ($20.00) as security for the Tenant's

faithful performance of all the terms, covenants, and conditions of this lease, and as security to the Management for the return of removable articles on the premises, which security is to remain in possession of the Management until after said premises have been vacated by the Tenant and then be returned to the Tenant, without interest, if all terms, covenants, and conditions of this lease to be performed by the Tenant have been fully performed. The said [fol. 20] deposit shall not be considered as liquidated damages, but shall be subject to the discharge and payment of all claims of the Management and obligations of the Tenant hereunder, notwithstanding that this lease may have been terminated or the Tenant dispossessed under any of the provisions hereof.

1. The Tenant agrees:

(a) To pay the rent at the Management Office when due without requiring a statement; and to pay, when billed, for any damage done to the premises except damages beyond the control of the Tenant and his family.

(b) To pay to Management upon demand of Management such penalty in the nature of increased rent or otherwise such amounts as Management may charge based on a determination by Management that the Tenant has consumed or is consuming electric energy, gas or water in excess of a normal amount to be fixed and determined by Management.

(c) Not to assign this lease; nor to sublet or transfer possession of the premises; nor to give accommodations to boarders or lodgers; nor to use or permit the use of the dwelling for any other purpose than a private dwelling solely for the Tenant and his family as reported.

(d) To quit and surrender the premises at the expiration of this lease in good order and repair, reasonable wear and tear excepted.

(e) To keep the premises in a clean and sanitary condition; to maintain the yard in a neat and orderly manner; to assist in the maintenance of the project; not to use the premises for any illegal or immoral purposes; not to keep dogs or other pets; nor to make any repairs or alterations without the written [fol. 21] consent of the Management; not to display any signs whatsoever; not to use tacks, nails, or screws or other fasteners in any part of the premises except in a manner prescribed by the Management; and to notify the Management promptly of the need of any repair to the premises.

(f) To follow all rules or regulations prescribed by the Management concerning the use and care of the premises and of any common or community space in the Project including walks, drives, playgrounds, community rooms, etc.

(g) To permit the Management or its representatives to enter the premises during all reasonable hours to examine the same or to make such repairs, alterations, or betterments as may be deemed necessary or to show the premises for leasing.

(h) To submit to the Management at least once each year upon the request of the Management a signed statement in such form as the Management may request, setting forth the facts as to the income and assets of himself and his family and as to the number and ages of members of his family.

(i) To promptly notify the Management of any increase or decrease in family income or of any change in family composition or assets.

2. If any of the statements submitted by the Tenant as required herein, or facts obtained by Management independently, show that the family income or composition has changed since the time of admission or preceding statement or report, as the case may be, so as to require a different rent on the basis of the approved rent schedule of the Management, then the Management will require the payment of, and the Tenant agrees to pay, [fol. 22] the rental established for the higher or lower grade appropriate to family income or composition.

   If, under the procedure of this section, an increase in rent is indicated because of change in the income or composition of the family, the Tenant hereby agrees that he will be liable for any and all rent due by reason of such changed status beginning with the first day of the month following that in which the change occurred, and further agrees that he will be subject to eviction in the event such rent is not paid.

   If, under the procedure in this section, a decrease in rent is indicated under the approved rent schedule of the Management, such decrease will be effective at such time and in such amount as Management may determine, provided that such decrease will not result in a per unit per month rental income which is lower than the lowest achievable rental which has been established for the Project.

3. If the Management determines, after submission by the Tenant of any of the statements required herein, that the annual income or assets of the Tenant and his family exceeds the limits established for eligible occupancy, the Management may terminate this lease at the end of any calendar month by giving the Tenant not less than 30 days' prior notice in writing. At the expiration of the time stated in said notice, the Management's representatives shall have the right immediately to re-enter the premises and remove all persons and property therefrom, and the Tenant hereby expressly waives all

notices required by law to terminate his tenancy and waives any and all legal proceedings to recover possession of said premises, and agrees that upon any such termination the representatives of the Management may immediately re-enter said premises and dispossess the [fol. 23] Tenant without legal notice or the institution of any legal proceedings whatsoever.

If, at any time during the period of this lease or any renewal thereof, his family no longer conforms to the Occupancy limits applicable to the dwelling unit occupied, as established by the Management, they shall move into a unit of appropriate size as designated by Management when a vacancy exists. If no unit of appropriate size is available in the Project within six (6) months after the change in the composition of the Tenant's family, the Tenant and his family may be required to move from the premises in accordance with the terms of this lease.

4. In the event of misrepresentation of any material fact in the application of the Tenant or in any statement submitted to the Management by the Tenant as required herein, or if the Tenant fails to comply with any of the provisions of this lease, it shall be automatically terminated at the option of the Management and the Management shall have the right immediately to re-enter the premises and remove all persons therefrom, and the Tenant hereby expressly waives all notice required by law to terminate this lease and waives any and all legal proceedings to recover possession of said premises and agrees that upon any such failure the Management may immediately re-enter said premises and dispossess the Tenant without legal notice or the institution of any legal proceedings whatsoever.

5. Any notice required by law or otherwise will be sufficient if delivered to the Tenant personally or sent by mail to the premises or affixed to the door of the prem-

ises. Notice to the Management must be in writing and delivered to the Housing Manager personally at the Management Office.

[fol. 24] 6. The failure or omission of the Management to terminate this lease for any cause given above shall not destroy the right of the Management to do so later for similar or other causes.

7. The Management agrees to furnish reasonable quantities of electricity, and gas, and water; but shall not be liable for failure to supply any of these services for any cause whatsoever. A penalty charge will be made quarterly for abusive use in excess of the quantities established and on record in the Management Office.

8. Neither the Management nor any of its representatives or employees shall be liable for damage or loss from theft or from any other cause whatsoever to the property of (i) the Tenant, (ii) any member of the Tenant's family, or (iii) any of the Tenant's visitors or guests, or for injury to person of Tenant, his family or visitors.

9. The Tenant hereby warrants that neither he nor any person who is to occupy the leased premises is a member of an organization designated by the Attorney General of the United States as subversive. The tenant agrees that if this warranty is false or if he, or any person who is to occupy the leased premises, becomes or continues to be a member of any organization now or hereafter so designated, he will promptly vacate the premises.

This lease evidences the entire agreement between the Management and the Tenant and no changes shall be made except in writing.

Housing Authority of
the City of Durham, N.C.

By: E. Gilliard

Tenant Joyce C. Thorpe

Tenant .....

[fol. 25] Executed this 11 day of November, 1964, in the presence of E. Gilliard.

In the Superior Court of Durham County

Exhibit #2—Notice of Cancellation of Lease

HOUSING AUTHORITY OF THE CITY OF DURHAM, N. C.

MEMORANDUM

From: C. S. Oldham

Date: August 11, 1965

To: Mrs. Joyce C. Thorpe
Apt. 38-G, Ridgeway Avenue

Copies to: Mrs. Evelyn Gilliard
Mr. James L. Bennett, Jr.

Your Dwelling Lease provides that the Lease may be cancelled upon fifteen (15) days written notice. This is to notify you that your Dwelling Lease will be cancelled effective August 31, 1965, at which time you will be required to vacate the premises you now occupy.

C. S. Oldham
Executive Director

CSO:jhe

IN THE SUPERIOR COURT OF DURHAM COUNTY

JUDGMENT (WITH EXCEPTIONS)—October 26, 1965

This cause, coming on to be heard, and being heard before the undersigned, Honorable William Y. Bickett, Judge Presiding, at the October Civil Term of Durham County Su- [fol. 26] perior Court, upon plaintiff and defendant having expressly waived trial by jury, and having stipulated and agreed in open Court that this matter be heard without a jury by the Judge, and that the Judge find the facts upon stipulations made and affidavit filed, and render thereon conclusions of law and judgment in the cause; and the Court, after hearing argument of counsel and considering and weighing the stipulations made in this action and the affidavit filed therein, finds facts as follows:

(1) That the Housing Authority of the City of Durham is and was during all of the times involved in this action, and specifically on the 11th of November, 1964, and thereafter, to the present date, a corporation, organized and operating under and by virtue of the laws of the State of North Carolina—specifically, the Statute known and designated as the Housing Authorities Law of the State of North Carolina;

(2) That during said times C. S. Oldham was the Executive Director of said Housing Authority of the City of Durham and charged with responsibility for management of the properties of the Housing Authority of the City of Durham located in the City of Durham;

(3) That on the 11th day of November, 1964, and thereafter continuously until this date, the Housing Authority of the City of Durham was and is the owner of real property known as the McDougald Terrace Housing Project, located in the City of Durham, and specifically a dwelling apartment located in said housing project, designated and known as No. 38-G Ridgeway Avenue;

(4) That on the 11th day of November, 1964, the plaintiff and the defendant entered into and duly executed a lease contract, wherein the Housing Authority of the City of Durham leased to the defendant Apartment No. 38-G Ridgeway Avenue in said McDougald Terrace Project for the term beginning November 11, 1964, and terminating at Mid- [fol. 27] night November 30, 1964, at a rental of $19.33 for said term, payable in advance on the first day of said term; that said lease contract further provided that the rental for these premises would be based on the current family composition and family income as were represented to the management of the Housing Authority of the City of Durham, and would be in conformance with the approved current rent schedule which had been adopted by the Housing Authority of the City of Durham for the operation of the project; that the lease further provided that the lease would be automatically renewed for successive terms of one month each at a rental of $29.00 a month, provided there was no change in the income or composition of the family and no violation of the terms of the lease; that the lease further provided that the rent should be payable in advance on the first day of each calendar month, and that the lease could be terminated by the tenant by giving to the Housing Authority of the City of Durham notice in writing of such termination fifteen (15) days prior to the last day of the term, and that management could terminate the lease by giving to the tenant notice in writing of such termination fifteen (15) days prior to the last day of the term; that there was no provision in said lease whereby it was agreed that the Housing Authority of the City of Durham would give the defendant any reason for termination of said lease or that any reason for the termination of said lease was required, and there was no provision in said lease that any hearing should be held by the Housing Authority or any other agency or person with respect to any decision by the Housing Authority of the City of Durham to terminate said lease and to give the defendant notice in writing of such termination, as was provided in the language of the lease;

(5) That the defendant, upon her execution of said lease, entered into and occupied said Apartment No. 38-G Ridge- [fol. 28] way Avenue of the McDougald Terrace Project, owned by the plaintiff, Housing Authority of the City of Durham, and does now continue to occupy said dwelling apartment;

(6) That on the 12th day of August, 1965, the plaintiff, Housing Authority of the City of Durham, gave to the defendant, Joyce C. Thorpe, notice in writing as follows: "Your Dwelling Lease provides that the Lease may be cancelled upon fifteen (15) days' written notice. This is to notify you that your Dwelling Lease will be cancelled effective August 31, 1965, at which time you will be required to vacate the premises you now occupy," and that the defendant duly received said notice to vacate on said date;

(7) That the defendant failed and refused to vacate said premises and continues to occupy same;

(8) That the Housing Authority of the City of Durham duly brought an action in summary ejectment before the Justice of the Peace Court in Durham County, and after hearing before said Court judgment was duly entered requiring the defendant, Joyce C. Thorpe, to vacate said premises and ordering any duly constituted officer of Durham County to remove the defendant from said premises;

(9) That the defendant gave notice of appeal to the Superior Court and posted bond, pursuant to the provisions of G. S. 42-34;

(10) That the plaintiff, Housing Authority of the City of Durham, acting through C. S. Oldham, its Manager and Executive Director, gave notice to the defendant to vacate said premises not because she had engaged in efforts to organize the tenants of McDougald Terrace, nor because she was elected President of a group organized in McDougald Terrace on August 10, 1965; that these were not the reasons said notice was given and eviction undertaken;

Exception #1

[fol. 29] (11) That the plaintiff, Housing Authority of the City of Durham, gave no reason to the defendant for giving her notice that the lease was being terminated at the end of the term, nor did the plaintiff or any of its agents or employees conduct a hearing at which the defendant was present or invited to be present to inquire into reasons for terminating her lease;

(12) That the defendant did request a hearing on this matter but had no hearing other than that before the Justice of the Peace in this eviction action and in this Court;

(13) That the plaintiff, through its agents and employees, did inform the defendant that the plaintiff was not required to give or assign reasons to the defendant for the termination of her lease, and has not given to her or communicated to her any reason for so doing, other than that they desired to terminate her lease;

Wherefore, the Court concludes, as a matter of law, as follows:

(1) That the defendant, during August of 1965, occupied the premises owned by the plaintiff, Housing Authority of the City of Durham, known and designated as Apartment No. 38-G Ridgeway Avenue, McDougald Terrace, under and pursuant to the terms and provisions of a lease, whereby she was tenant from month to month;

(2) That by giving the defendant written notice of termination of her lease on the 12th day of August, 1965, the plaintiff effectively terminated the tenancy of the lease of the defendant as of the 31st day of August, 1965;

Exception #2

(3) That the continued occupancy of said premises by the defendant after the 31st day of August, 1965, was without right and was wrongful and against the express direc-
[fol. 30] tion of the owner of said premises to vacate and in violation of said owner's right to possession of said premises;

Exception #3

(4) That the Housing Authority of the City of Durham did not owe a duty to communicate or give to the defendant any reason for its termination of her lease, nor was it required or had any duty to hold a hearing on said subject;

Exception #4

(5) That the Housing Authority of the City of Durham acted in conformity with and in accordance with the terms and provisions of the lease entered into with the defendant, and the provisions of the laws of the State of North Carolina, in terminating her lease;

(6) That the plaintiff is entitled to the possession of the premises described hereinabove, and that the defendant is in the wrongful possession thereof;

Exception #5

Now, Therefore, It Is Ordered, Adjudged And Decreed that the defendant be removed from the said premises known as Apartment No. 38-G Ridgeway Avenue, and the plaintiff put in possession thereof, and that the plaintiff have and recover from the defendant the sum of Fifty-eight and No/100 ($58.00) Dollars, and a further amount, if any, as reasonable rent for said premises from the 1st day of November, 1965, until the premises are vacated by the defendant, and the defendant shall pay the costs to be taxed by the Clerk.

This 26th day of October, 1965.

William Y. Bickett, Judge Presiding.

IN THE SUPERIOR COURT OF DURHAM COUNTY

APPEAL ENTRIES

The plaintiff and the defendant, having waived the right of a trial by jury in open Court, and agreeing upon the [fol. 31] Court finding the facts, conclusions of law, and enter a judgment, the Court further found the facts, con-

clusions of law and signing the judgment in this cause, the defendant hereby excepts to findings of facts, conclusions of law and the judgment as appear in the record.

Thereupon the defendant, through her counsel, gave notice in open Court of her appeal to the Supreme Court of North Carolina; further notice waived. The defendant is allowed sixty days in which to prepare and serve statement of case on appeal and the plaintiff is allowed thirty days thereafter to serve countercase or exceptions.

Stay of execution bond was fixed at $348.00, the same being the amount of the stay of execution bond in effect on appeal from the Justice of the Peace Court to the Superior Court, which is continued in effect.

Appeal bond is fixed at $200.00.

This the 5th day of November, 1965.

William Y. Bickett, Judge Presiding.

IN THE SUPERIOR COURT OF DURHAM COUNTY

STIPULATION AS TO RECORD

It is stipulated and agreed by Counsel for the Plaintiff and Counsel for the Defendant that the foregoing constitutes the statement of case on appeal and that the same was prepared and served and service of same accepted in apt time.

Edwards & Manson, By: Daniel K. Edwards, Attorneys for Plaintiff;

McKissick & Burt, By: M. C. Burt, Jr.; Attorneys for Defendant.

[fol. 32]

IN THE SUPERIOR COURT OF DURHAM COUNTY

GROUPING OF EXCEPTIONS AND ASSIGNMENTS OF ERROR

1. For that the Court erred in finding as a matter of fact that the plaintiff Housing Authority of the City of Durham, acting through C. S. Oldham, its Manager and Executive Director, gave notice to the defendant to vacate said premises not because she had engaged in efforts to organize the tenants of McDougald Terrace, nor because she was elected President of a group organized in the McDougald Terrace on August 10, 1965; that these were not the reasons said notice was given and eviction undertaken, as shown by Exception #1 (R p 28).

2. That the Court erred in finding as a matter of law that by giving written notice of termination of her lease on the 12th day of August, 1965, the plaintiff effectively terminated the tenancy of the lease of the defendant as of the 31st day of August. As shown by Exception #2 (R p 29).

3. For that the Court erred in finding as a matter of law that the continued occupancy of the premises by said defendant after the 31st day of August, 1965, was without right and was wrongful and against the express direction of the owner of said premises to vacate and in violation of said owner's right to possession of said premises. As is shown by Exception #3 (R pp 29-30).

4. For that the Court erred in finding as a matter of law that the Housing Authority of the City of Durham did not owe duty to communicate or give the defendant any reason for its termination of her lease, nor was it required or had any duty to hold a hearing on said subject. As shown by Exception #4 (R p 30).

5. For that the Court erred in finding as a matter of law that the plaintiff is entitled to the possession of the [fol. 33] premises, and that the defendant is in the wrongful possession thereof. As shown by Exception #5 (R p 30).

[fol. 34]

IN THE NORTH CAROLINA SUPREME COURT

HOUSING AUTHORITY OF THE CITY OF DURHAM

v.

JOYCE C. THORPE

OPINION, PER CURIAM

Appeal by defendant from Bickett, J., October 1965 Civil Session of Durham.

The plaintiff instituted summary ejectment proceedings before H. L. Townsend, Justice of the Peace, to remove the defendant from Apartment No. 38-G Ridgeway Avenue, McDougald Terrace, in the city of Durham. From a judgment in favor of the plaintiff in the Court of the Justice of the Peace, the defendant appealed to the superior court where the matter was heard *de novo* by the court without a jury. The court made findings of fact, each of which is supported by stipulations or by the evidence in the record. The material facts so found may be summarized as follows:

The plaintiff, a corporation organized and operating under the laws of the State of North Carolina, is the owner of the tract of land known as the McDougald Terrace Housing Project in the city of Durham, which includes Apartment No. 38-G Ridgeway Avenue. On 11 November 1964 the plaintiff and the defendant entered into a lease contract whereby the plaintiff leased to the defendant the said apartment for a term beginning 11 November 1964 and terminating at midnight 30 November 1964. The lease provided that it would be automatically renewed for successive terms of one month each. It further provided that the lease could be terminated by either party by giving to

the other written notice of such termination 15 days prior to the last day of the term. There was no provision in the lease requiring the lessor to give to the lessee any reason for its decision to terminate the lease or requiring that any hearing be held by the plaintiff, or by any other person or agency, with respect to such decision.

[fol: 35] The defendant occupied the apartment pursuant to the lease. On 12 August 1965 the plaintiff gave, and the defendant received, a written notice that the lease was cancelled effective 31 August 1965 and that at such time the plaintiff would be required to vacate the premises. The plaintiff gave no reason to the defendant for its decision to terminate the lease, advising the defendant that it was not required to do so. The defendant requested a hearing but the plaintiff did not conduct any hearing at which the defendant was present. Whatever may have been the plaintiff's reason for terminating the lease, it was neither that the defendant had engaged in efforts to organize the tenants of McDougald Terrace nor that she was elected president of a group which was organized in McDougald Terrace on 10 August 1965. The defendant refused to vacate the premises.

Upon these findings, the court concluded that the plaintiff terminated the lease as of 31 August 1965; that the occupancy of the premises by the defendant after such date was wrongful and in violation of the plaintiff's right to possession; that there was no duty upon the plaintiff to give to the defendant any reason for its termination of the lease or to hold any hearing upon the matter; and that the plaintiff was entitled to the possession of the premises and the defendant was in wrongful possession thereof.

The court, therefore, gave judgment that the defendant be removed from the premises, that the plaintiff be put in possession thereof and that the plaintiff have and recover from the defendant $58.00 plus a reasonable rent for the premises from and after 1 November 1965 until the same

are vacated, together with the costs of the action. From this judgment the defendant appeals.

M. C. Burt, R. Michael Frank, Jack Greenberg, Sheila Rush, Edward V. Sparer of Counsel for defendant appellant.

Daniel K. Edwards for plaintiff appellee.

PER CURIAM. The plaintiff is the owner of the apartment in question. The defendant has no right to occupy it except [fol. 36] insofar as such right is conferred upon her by the written lease which she and the plaintiff signed. This lease was terminated in accordance with its express provisions at midnight 31 August 1965. With its termination, all right of the defendant to occupy the plaintiff's property ceased. Since that date the defendant has been and is a trespasser upon the plaintiff's land.

The defendant having gone into possession as tenant of the plaintiff, and having held over without the right to do so after the termination of her tenancy, the plaintiff was entitled to bring summary ejectment proceedings against her to restore the plaintiff to the possession of that which belongs to it. G.S. 42-26; Murrill v. Palmer, 164 NC 50, 80 SE 55. It is immaterial what may have been the reason for the lessor's unwillingness to continue the relationship of landlord and tenant after the expiration of the term as provided in the lease.

Having continued to occupy the property of the plaintiff without right after 31 August 1965, the defendant, by reason of her continuing trespass, is liable to the plaintiff for damages due to her wrongful retention of its property and for the costs of the action. G.S. 42-32; McGuinn v. McLain, 225 NC 750, 36 SE 2d 377; Lee, North Carolina Law of Landlord and Tenant, § 18.

No Error.

Moore, J., not sitting.

[fol. 37]

IN THE SUPREME COURT OF NORTH CAROLINA

HOUSING AUTHORITY OF THE CITY OF DURHAM

VS.

JOYCE C. THORPE

JUDGMENT

This cause came on to be argued upon the transcript of the record from the Superior Court, Durham County:

Upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said Superior Court.

It is adjudged by the Court here that the opinion of the Court, be certified to the said Superior Court, to the intent that the proceedings be had therein in said cause according to law as declared in said opinion.

And it is considered and adjudged further, that the defendant and surety to the appeal bond, C. C. Malone, Sr. do pay the costs of the appeal in this Court incurred, to wit, the sum of Twenty-One and 40/100 dollars ($21.40), and execution issue therefor. Certified to Superior Court this 6th day of June 1966.

A True Copy

Adrian J. Newton, Clerk of the Supreme Court, By: Kathryn W. Bartholomew, Deputy Clerk.

[fol. 38]

SUPREME COURT OF NORTH CAROLINA

CLERK'S CERTIFICATE

Appeal docketed	8 April 1966
Case argued	10 May 1966
Opinion filed	25 May 1966
Final judgment entered	25 May 1966

I, Adrian J. Newton, Clerk of the Supreme Court of North Carolina, do hereby certify the foregoing to be a full, true and perfect copy of the record and the proceedings in the above entitled case, as the same now appear from the originals on file in my office.

I further certify that no petition to rehear has been filed, and that the time for filing such petition, under the rules of this Court, has expired.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at office in Raleigh, North Carolina, this 27th day of July, 1966.

(Seal)

Adrian J. Newton, Clerk of the Supreme Court, By: Carolyn J. Dalton, Deputy Clerk.

[fol. 39]

SUPREME COURT OF THE UNITED STATES

No. .....—October Term, 1966

JOYCE C. THORPE, Petitioner,

vs.

HOUSING AUTHORITY OF THE CITY OF DURHAM

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including October 21, 1966.

William J. Brennan, Jr., Associate Justice of the Supreme Court of the United States.

Dated this 12 day of August, 1966

[fol. 40]

SUPREME COURT OF THE UNITED STATES

No. 712—October Term, 1966

JOYCE C. THORPE, Petitioner,

v.

HOUSING AUTHORITY OF THE CITY OF DURHAM

ORDER ALLOWING CERTIORARI—December 5, 1966

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.